Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-478

MAY TERM, 2002

Nancy Schmitt-Mosher	}	APPEALED FROM:
	}	Rutland Family Court
v.	}	DOCKET NO. 637-11-99 Rddm
Craig Mosher	}	Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

This appeal concerns an award of spousal maintenance with which neither plaintiff wife nor defendant husband is satisfied. The court ordered defendant to pay plaintiff $2,400 per month in maintenance until September 1, 2011, after the parties' youngest child graduates from high school, and $1,500 thereafter until September 1, 2014, when plaintiff will be able to access certain deferred compensation without penalty. Plaintiff alleges error in the amount and duration of the award. Defendant also contests the amount of the award, in addition to the provision mandating a yearly cost-of-living increase based on the consumer price index. We reverse and remand.

The parties, both 46-years old at the time of the hearing in this matter, were married in 1983. Both high school graduates, the parties owned a successful excavating business together during the course of their marriage. After the parties' two children were born, plaintiff continued to work for the business part time by keeping books in an office in the marital home. The business allowed the family to enjoy a comfortable lifestyle, which included dining out once a week, purchasing nice clothing, taking regular vacations, and involving the children and themselves in sporting activities. At the time of the divorce, the parties had property worth approximately $2,154,502. They stipulated to an equitable division of the property, with plaintiff receiving assets worth $1,004,368, and defendant receiving $1,150,134 in assets. The excavation business, which continues to pay defendant's health insurance and automobile expenses, comprised the bulk of defendant's property award.

The court found that the excavation business will allow defendant to continue to enjoy a steady income. On the other hand, it found that plaintiff's financial resources are limited. While working part-time for their business, plaintiff earned a salary which exceeded what she could reasonably expect to earn in the free employment market. The court did not elaborate further, however, so we do not know what plaintiff's future earning capacity is.

Plaintiff appealed the family court's order arguing first that the court's findings were inadequate to explain the basis for the award. We agree.

The family court has broad discretion to set an amount for spousal maintenance. Gulian v. Gulian, ___ Vt. ___, ___, 790 A.2d 1116, 1119 (2001). Maintenance is intended to provide for the needs of the recipient spouse, and should be established in an amount which allows both parties to keep the standard of living they enjoyed while they were married to the extent possible, while correcting for the "inequalities in the parties' financial positions at the termination of marriage." Id. at ___, 790 A.2d at 1120. In light of the court's broad discretion in awarding maintenance, we will set aside the court's order only where no reasonable basis exists to support it. Delozier v. Delozier, 161 Vt. 377, 381 (1994). Sufficient factual findings are necessary for us to determine whether a reasonable basis exists to support the court's order, however. See Naumann v. Kurz, 152 Vt. 355, 362 (1989) (trial court's failure to make findings on parties'

standard of living during marriage and recipient spouse's reasonable needs is reversible error); DeGrace v. DeGrace, 147 Vt. 466, 470 (1986) (trial court's inadequate findings on whether payor spouse is able to pay maintenance amount requires remand).

In this case, the court's findings fail to provide us with a sufficient basis to determine whether the $2,400 per month award was reasonable and within the court's discretion. For example, on the first statutory factor, namely plaintiff's financial resources and her ability to meet her needs independently, see 15 V.S.A. § 752(b)(1), the court simply found that plaintiff had limited financial resources. It made no findings on the extent to which plaintiff could presently, or in the future, meet her needs independently, including what her earning capacity is.

This case is not like Kohut v. Kohut, 164 Vt. 40 (1995), as defendant suggests in his brief. In that case, we noted that the court is not required to make findings on all the statutory factors so long as the order shows that the court considered them when rendering its decision. See 164 Vt. at 43. In contrast to this case, the trial court in Kohut made specific findings on the parties' respective earning capacities, including plaintiff's need to resort to public assistance in the absence of maintenance. Id. at 42, 43. The trial court's findings in Kohut were therefore adequate for us to conclude that the court exercised its discretion appropriately in light of the evidence before it. Id. at 43. Without adequate findings, we must remand to the family court.

Plaintiff also challenges the court's decision to tie the duration of the $2,400 award to the high school graduation of their youngest child. In Gulian we held that is error to link the duration of maintenance to the date on which the parties' children reach the age of eighteen. Gulian, ___ Vt. at ___, 790 A.2d at 1121. Considering the compensatory purpose of maintenance in cases such as this, we explained that linking the duration of maintenance payments to a child's majority gives no consideration to the recipient spouse's contribution to the marriage, other than childrearing, or that spouse's right "as an individual to financial security." Id. at ___, 790 A.2d at 1121. The family court therefore erred by reducing defendant's maintenance obligation when the parties' youngest child graduates from highschool.

Plaintiff next alleges that the court erred by terminating maintenance in 2014, noting that permanent maintenance awards are increasingly more common in marriages of fifteen years or more. See Delozier, 161 Vt. at 383 (Court observes that permanent maintenance awards "are increasingly being made in marriages of fifteen years or more"). The most important factors in determining the duration of a maintenance award are the recipient spouse's role during the parties' marriage and "the income that spouse is likely to achieve in relation to the standard of living set in the marriage." Id. As we stated in Delozier, the court must consider "what period of time will (1) enable the recipient spouse to achieve self-sufficiency at the appropriate standard of living, and (2) compensate that spouse for the disparity in the parties' present and future earning capacities that is attributable to their marriage and divorce." Id. at 384.

Again, the court's inadequate findings in this case make appellate review of this claim impossible. The court explained that its decision to terminate maintenance in 2014 was due to plaintiff's ability to access her deferred compensation funds without penalty at that time. The order contains no findings, however, on what or how much the deferred compensation is or what income plaintiff can reasonably expect to receive from it in 2014. The order adopted the parties' stipulated property settlement, but that settlement did not identify which of the many funds plaintiff received were accessible to her immediately and which were not. The lack of those findings, in addition to the absence of findings on the parties' incomes, particularly plaintiff's, requires us to remand this issue to the trial court.

Defendant also contests the family court's maintenance order. He claims $2,400 per month is excessive because the court understated plaintiff's income by omitting consideration of her part- time employment outside the parties' excavating business. The court did not make findings on plaintiff's income, and therefore we do not know whether the court understated it. In light of our remand, the court will have another opportunity to address defendant's concern and we need not elaborate further.

Defendant also challenges the court's decision to include an annual cost-of-living adjustment based on the consumer price index ("CPI"). The court must take "inflation with relation to the cost of living" into account when setting a maintenance amount. 15 V.S.A. § 752(b)(7); Bell v. Bell, 162 Vt. 192, 200 (1994). An adjustment tied to the cost of living "assures that the recipient's buying power will be maintained over time." Chaker v. Chaker, 155 Vt. 20, 27 (1990). The statute does not create a presumption in favor of cost-of-living increases, however. See Bell, 162 Vt. at 200.

In this case, the court determined that a yearly increase based on the CPI was appropriate to protect the value of the maintenance award, and consequently plaintiff's standard of living, in light of the uncertainty of the stock and real estate markets. Defendant asserts that the court did not have any evidence before it concerning that uncertainty, and therefore the essential finding on the court's conclusion under § 752(b)(7) was reversible error. We have not had occasion to determine what evidence is necessary to address the § 752(b)(7) factor and we need not do so here. The court's post-remand findings may be sufficient to support its decision on this factor. Therefore on remand, the family court should issue findings, based on the evidence, with this factor in mind.

Reversed and remanded for further factual findings.

BY THE COURT:

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice